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Letter dated 17 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 January 2003 (S/2003/22).

The Counter-Terrorism Committee has received the attached third report from El Salvador submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 19 February 2003 from the Permanent Representative of El Salvador to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

With reference to your note, dated 25 November 2002, I have the honour to attach herewith the second supplementary report of the Republic of El Salvador to the report submitted pursuant to Security Council resolution 1373 (2001) (see enclosure).

Also attached is a copy of legislative decree No. 918, published in issue No. 148, tome 356, of the *Diario Oficial*, of 14 August 2002.*

(*Signed*) Víctor Manuel **Lagos Pizzati**
Ambassador
Permanent Representative

* Enclosures are on file with the Secretariat and are available for consultation.

Enclosure

Second report of the Republic of El Salvador supplementary to the report submitted pursuant to Security Council resolution 1373 (2001)

Replies to the observations of the Counter-Terrorism Committee on the report submitted by El Salvador pursuant to resolution 1373 (2001)

1. Implementation measures

1.1 The Counter-Terrorism Committee (CTC) has agreed on further questions and comments for the consideration of the Government of El Salvador with regard to the implementation of the resolution, as set out in this section.

1.2 Effective implementation of paragraph 1 of the resolution requires that there be provisions in place specifically criminalizing the wilful provision or collection, by any means, directly or indirectly, of funds by the nationals of El Salvador or in its territory with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above, it is not necessary that the funds actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**

  or

- **No related terrorist act has actually occurred or is attempted.**

Please explain whether these requirements will be dealt with by reform of the Penal Code or by the introduction of a special law criminalizing the financing of terrorism, as mentioned in the report.

El Salvador considers that, given the nature of the different norms and provisions (penal, administrative and procedural) that must be implemented to combat the complex phenomenon of terrorism, special legislation should be enacted for this purpose, since it would otherwise be necessary and imperative to undertake a comprehensive review of all the various legal texts related to this area, such as the Banking Act, the Money-Laundering Act, the Penal Code, the Code of Penal Procedure, and a large number of financial and administrative laws, which will have to be amended or reformed.

1.3 Paragraph 1 of the resolution requires also an appropriate monitoring mechanism to ensure that funds and other economic resources collected by non-profit organizations (e.g. religious, charitable or cultural organizations) are not diverted for purposes other than the stated purposes, particularly for financing of terrorism. Please outline any such provisions existing in El Salvador. If there are none, please explain how El Salvador intends to meet this requirement.

With regard to the monitoring mechanism to ensure that funds and other economic resources collected by non-profit organizations are not diverted for purposes other than the stated purposes, particularly for the financing of terrorism, no special legal provisions have been adopted in El Salvador in this area and monitoring is carried out only by the Ministry of the Interior. It is, however, proposed to introduce norms in implementation of the recommendations of the Financial Action Task Force (FATF) and the Group of Experts on Money-Laundering of the Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS), adopted in Mexico, D.F., in July 2002, concerning the regulation and registration of non-profit organizations.

1.4 Subparagraph 1 (c) of the resolution requires a State to freeze without delay the funds and other financial assets or economic resources of terrorists and terrorist-related persons and entities. The supplementary report states that, on the basis of article 25 of the Money-Laundering Act, the Attorney-General of the Republic may order the freezing of bank accounts of persons accused of the crimes covered by that Act. Article 6 of the same Act appears not to include the crime of terrorism. Moreover, the Money-Laundering Act deals with proceeds of crime only, though the funds used for financing of terrorism may also be of a legal origin. Therefore, the Money-Laundering Act does not appear to meet fully the requirement of this paragraph. Please explain whether article 180 of the Code of Criminal Procedure provides for the freezing of funds in the situation where the funds are suspected of being linked to terrorism, even if the funds are not of illegal origin and no terrorist act has yet been committed. If not, how does El Salvador intend to meet this requirement?

With reference to the observation that article 6 of the Money-Laundering Act "appears not to include the crime of terrorism" for the purposes of freezing without delay the funds and other financial assets or economic resources of terrorists and terrorist-related persons and entities, we note that there has been an erroneous interpretation of that legal precept, since the aforementioned article 6 states: "**... This Act covers any criminal activity that gives rise to money-laundering . .**". It is therefore not so much a restrictive list of crimes that are to be considered as giving rise to money-laundering, but a non-exhaustive listing of some of the criminal activities that are indicative of such crimes, since the article expressly states: "**... particularly the following, where applicable ... and any act of concealment or legalization of money or assets derived from criminal activities ...**".

With reference to the observation that El Salvador's Money-Laundering Act "deals with **proceeds of crime** only, though the funds used for financing of terrorism may also be of a legal origin", it should be pointed out that the term "**preventive seizure**", used both in article 25 (2) of the Money-Laundering Act and in article 180 of the Code of Criminal Procedure, covers not only the proceeds of crime but also all assets derived from the crime of money-laundering and from **the criminal activity that gave rise to or preceded it**, which may also include assets that are subject to confiscation or which may be used as evidence.

"**Preventive seizure**" should be understood as a procedural step through which the assets or items that can be used as evidence are introduced into the criminal proceeding and the evidence thus secured, or, where the assets or items are

confiscated by the State, as the consequence of the legal act of confiscation, which is thus carried out. As a means of securing the evidence, seizure temporarily affects the capacity to dispose of assets that may be used as evidence, whomsoever their owner. As a means of effecting a possible confiscation, it also temporarily removes the power to transfer the asset, in order to ensure that a future compensatory judgement can be enforced.

This procedural step of **preventive seizure** therefore includes the instruments, objects and proceeds of the crime (source and laundering of assets). The category covers: (a) the items used to commit the crime, which are the means employed to attempt or to carry out the punishable act; (b) the items intended for use in the commission of a crime, which are the means prepared by the author to achieve his criminal purpose, but which were not actually used; (c) the proceeds of the crime, which are the objects created, processed, changed or acquired through the crime; and (d) the items that represent the proceeds of a crime, which are those that, while not the direct proceeds therefrom, nevertheless represent the indirect proceeds from the criminal activity.

In conclusion, both article 25 of the Money-Laundering Act and article 180 of the Code of Criminal Procedure are **unreservedly applicable** in taking action to freeze without delay the funds and other financial assets or economic resources of terrorists and terrorist-related persons and entities, even when such funds are of legal origin and no terrorist acts have actually been committed, since, from the moment that they have been used or were intended for use in engaging in criminal activity, they are liable to be confiscated or seized preventively.

1.5 Please explain how El Salvador could deal with a request from another State to freeze funds that are not proceeds of crime, but are of legal origin, and yet are suspected of being used, or intended for use, for a terrorist act.

Concerning the manner in which El Salvador could deal with a request from another State to freeze funds that are not proceeds of crime, but are of legal origin, and yet are suspected of being used, or intended for use, for a terrorist act, as explained in the paragraph above, if the funds to be frozen have been used, are to be used or were intended for use in such criminal activity, they are liable to be confiscated or seized preventively, regardless of whether their source is a legitimate economic activity or whether they are derived from drug trafficking or other criminal activity. In such case therefore, article 25 of the Money-Laundering Act and article 180 of the Code of Criminal Procedure are also **fully applicable** in freezing without delay funds linked to terrorist acts or terrorist organizations.

1.6 Effective implementation of subparagraphs 2 (d) and (e) of the resolution requires the criminalization of the use of Salvadoran territory for the purpose of committing a terrorist act against other States or their citizens and for the purpose of financing, planning and facilitating terrorist acts against other States or their citizens, even if no related terrorist acts have actually been committed or attempted. Please explain what action El Salvador intends to take in this regard.

There is no legal impediment whatsoever in El Salvador to characterizing as a separate crime the use of the national territory for the purposes stated in paragraphs 2 (d) and (e) of the resolution under reference, since the legislative technique used

would be for such crimes to be considered an abstract danger and/or crimes that are anticipated. In other words, they would constitute crimes of intent, including acts that were not consummated, insofar as characterization as a crime would require only that the author's intention in committing the criminal act yields a result that is different from his act. Our criminal law also observes the principle of universality, under which Salvadoran criminal law is applicable to crimes committed by any person in a place not subject to the jurisdiction of El Salvador, provided that the crimes in question affect assets that are protected internationally by specific agreements or norms of international law or would lead to a grave violation of universally recognized human rights.

1.7 Please provide a progress report on the review of the definition in the Penal Code of "terrorist acts", as mentioned in relation to subparagraph 1 (b) in the supplementary report.

El Salvador, through the Inter-Agency Group against Terrorism (GRICTE), is currently reviewing the differing concepts of international terrorism and has reached a general consensus on what constitutes terrorism. However, as in the United Nations, debate is continuing on a universally acceptable definition.

1.8 Please explain which crimes are the "crimes of international significance" mentioned in article 28 of the Constitution and explain also whether that article has the effect that those crimes are not extraditable. In this regard please explain whether El Salvador would prosecute or extradite a foreign national who is alleged to have committed a terrorist act outside El Salvador against another State or its citizens and who is found in El Salvador, in order to fulfil the requirements of subparagraph 2 (e) of the resolution.

Article 28 of the Constitution of the Republic of El Salvador states:

"Art. 28 — El Salvador shall grant asylum to foreign nationals wishing to reside in its territory, except in those cases provided for in its laws and in international law. Such exceptions may not include persons who are persecuted solely for political reasons.

"Extradition shall be governed by international treaties and, in the case of Salvadorans, shall take place only if the corresponding treaty expressly provides for it and has been adopted by the legislative bodies of the signatory States. In any case, the principle of reciprocity must be upheld and Salvadorans must be guaranteed due process of law, as set forth in this Constitution.

"Extradition shall take place when the crime has been committed within the territorial jurisdiction of the requesting State, except in the case of crimes of international significance, and may in no case be imposed for political crimes, even if ordinary crimes are committed as a result.

"Ratification of extradition treaties shall require a two-thirds vote by the elected deputies."

Salvadoran legislation does not specifically define crimes that are considered to be of international significance; however, references to them in the Constitution of the Republic of El Salvador shall mean crimes defined as such in international treaties, including, drug trafficking, money-laundering, terrorism and crimes against humanity.

With regard to the second part of the question, requesting an explanation as to why, under article 28 of the Constitution, "crimes of international significance" are not extraditable, in accordance with the third paragraph of article 28, extradition shall take place when the crime has been committed in the territorial jurisdiction of the requesting State, ***except in the case of crimes of international significance***. What this means is that extradition shall take place when the crime has been committed within the territorial jurisdiction of the requesting State, except in the case of crimes of international significance, in which case territoriality shall not apply, but rather the relevant provisions of international treaties and conventions on such matters. Hence, crimes of international significance are indeed extraditable.

The Salvadoran Penal Code sets out the cases in which Salvadoran penal law shall apply. Under article 10, on the principle of universality, "Salvadoran penal law shall apply to crimes committed by anyone in a place that is not under Salvadoran jurisdiction, where such crimes cause harm to property that is internationally protected by specific agreements or norms of international law or involve a serious violation of universally recognized human rights."

As for whether El Salvador would extradite the foreign nationals referred to in the question, indeed it would, in accordance with the provisions of article 28 of the Constitution of the Republic.

Consistent with the foregoing and with the provisions of the relevant treaties to which El Salvador is a party, El Salvador can indeed prosecute or extradite a foreign national who is found in El Salvador and is alleged to have committed a terrorist act outside El Salvador against another State. A person who commits a terrorist act would be considered to have committed a serious crime punishable by 5 to 20 years' imprisonment, in accordance with existing legislation.

1.9 Paragraph 3 of the resolution calls upon all States to become parties as soon as possible to all the relevant international conventions and protocols related to terrorism. The Counter-Terrorism Committee would appreciate receiving a report on the progress made by El Salvador in:

- **Becoming a party to the instruments to which it is not yet a party; and**
- **Enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.**

Regarding the steps taken by El Salvador to become a party to instruments to which it is not yet a party, on 12 February, the Legislative Assembly of El Salvador ratified the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, respectively, and the respective instruments of ratification are expected to be deposited shortly. The technical analysis of the International Convention on the Physical Protection of Nuclear Material by the competent institutions is still under way, with a view to issuing a final opinion as to the feasibility of El Salvador becoming a party to this Convention.

The Legislative Assembly has also ratified the Inter-American Convention against Terrorism of the Organization of American States.

As for the measures taken by El Salvador to enact legislation and make other necessary arrangements to give effect to the instruments to which it has become a party, the Inter-Agency Group against Terrorism, established at the national level, is

evaluating how the relevant domestic legislation incorporates the provisions of the various international instruments relating to terrorism, and this should help to determine whether a specific law on terrorism or reforms in the current legislation are needed. The experiences of other countries are being taken into account in this evaluation. The Legislative Assembly of El Salvador is also making efforts in this area and, at some stage, will work with the Inter-Agency Group against Terrorism.

Additionally, a National Defence Act, one of whose objectives is to contribute to the maintenance of international peace and security, has been adopted.

1.10 Please provide the Counter-Terrorism Committee with a progress report on the enactment and implementation of the draft act on refugees.

The Act on the Determination of Refugee Status has been in effect since its publication in the *Diario Oficial*, issue No. 148, tome 356, of 14 August 2002 (see annex).

Both the Ministry of Foreign Affairs and the Ministry of the Interior, as the authorities responsible for implementing the Act, are making every effort to implement it properly. In this connection, an example of the measures they have taken is the training being offered, with cooperation from the Office of the United Nations High Commissioner for Refugees (UNHCR), to those directly involved in implementing it.

1.11 Subparagraph 3 (g) of the resolution requires States to ensure that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists. Please explain how El Salvador intends to meet this requirement, having regard both to article 28 of the Constitution and to article 21 of the Penal Code, which defines political crimes.

Under article 28 of the Constitution of the Republic of El Salvador, "extradition may in no case be imposed for political crimes". Article 21 of the Penal Code defines political crimes and ordinary crimes related to political crimes as follows: "For penal purposes, political crimes are considered to be crimes against the constitutional system and the existence, security and organization of the State. Ordinary crimes committed for political ends, with the exception of crimes against the life and physical integrity of heads of State or Government, shall also be characterized as political crimes. Crimes directly or immediately related to a political crime, or which constitute a natural and frequent means for preparing, carrying out or abetting such crime, shall be characterized as ordinary crimes related to political crimes", as defined in the Penal Code under Title XVII, Chapter I, on crimes against the constitutional system, including rebellion (article 340), sedition (article 341), and proposing or conspiring to commit rebellion or sedition, or apology therefor (article 342) and, under Title XVIII on crimes related to the existence, security and organization of the State, including attacks on the integrity and existence of the State (article 350), attacks on the unity of the State (article 351), treason (article 352), providing intelligence to a foreign State (article 353), incitement to war, reprisals or international enmity (article 354), disclosure of State secrets (article 355), spying (article 356), sabotage (article 357), disloyalty in Government negotiations (article 358), violation of treaties, truces, armistices or safe conducts (article 359) and violation of diplomatic immunity (article 360)."

El Salvador, within the framework established by the Constitution of the Republic, international treaties to which it is a party, and implementing legislation, will do its utmost to ensure that claims of political motivation are not recognized as grounds for denial of requests for extradition, since the national law provides a clear definition of what is meant by political crimes.

2. Assistance and guidance

2.1 The Counter-Terrorism Committee is eager to facilitate the provision of assistance and advice in connection with the implementation of the resolution. It encourages El Salvador to inform the Committee of any areas (other than those set out below) in which assistance or advice might be of benefit in taking forward the implementation of the resolution in El Salvador, or of any areas in which El Salvador might be in a position to offer assistance or advice to other States on the implementation of the resolution. The Counter-Terrorism Committee maintains a Directory of Information and Sources of Assistance in the field of Counter-Terrorism, on which all relevant information on available assistance is posted. It can be found on the Committee's web site (www.un.org/sc/ctc). The Committee's Technical Assistance Team is available to discuss any aspect of the provision of assistance and can be contacted as in paragraph 3.1 below.

2.2 The Counter-Terrorism Committee notes that the Government of El Salvador has requested assistance in connection with the implementation of the resolution in the following areas:

- **Training and technical assistance for personnel in implementing anti-terrorism laws;**
- **Financial cooperation and institution-building in the areas of customs and immigration law and police and law enforcement.**

2.3 At this stage, the Counter-Terrorism Committee will be focusing on requests for assistance that relate to "Stage A" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the resolution is a matter for agreement between them. The Committee would be grateful to be kept informed of any such arrangements and on their outcome.

El Salvador, through its armed forces, is a party to the Conference of American Armies, which, after 40 years of successful work, has become the main forum in which the armies of America exchange experiences in order to face the great challenges and common threats of the new millennium. A web site, www.redcea.org, has therefore been established to illustrate the scope of this international military organization and for the exchange of information and experiences among the armies that are members of the Conference.

The aim of the Conference of American Armies is the analysis, debate and exchange of ideas and experiences related to matters of common interest in the field of defence so as to heighten cooperation and coordination among armies and to contribute from the perspective of military thinking to the security and democratic development of the member countries.